

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANAPOLIS DIVISION**

IN RE:

ITT EDUCATIONAL SERVICES, INC. et al.¹

Debtors.

Chapter 7

Case No. 16-07207-JMC-7A

**STUDENT CLAIMANTS' MOTION FOR APPROVAL OF CLOSING PROCESS FOR
STUDENT CLASS DISTRIBUTIONS INCLUDING A CY PRES AWARD**

Student Claimants Jorge Villalba, James Eric Brewer, Joshua Cahill, Juan Hincapie, and Cheryl House (“Student Claimants” or “Class Representatives”), on behalf of themselves and all other similarly situated (“Class Members” or “Student Class” or “the Class”), respectfully submit this Motion for Approval of Closing Process for Student Class Distributions Including a Cy Pres Award (“Motion”), in accordance with the Order Granting Student Claimants’ Motion to Approve Distribution Plan, Including an Award of Attorneys’ Fees and Expenses, and Students Claimants’ Incentive Awards [Doc. No. 4636].

I. JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

4. The bases for relief requested herein are Federal Rule of Bankruptcy Procedure 7023, this Court's Final Approval Order of the Settlement [Doc No. 3079], and this Court's Order Granting Student Claimants' Motion to Approve Distribution Plan, Including an Award of Attorneys' Fees and Expenses, and Students Claimants' Incentive Awards [Doc. No. 4636].

II. PROCEDURAL HISTORY AND BACKGROUND

5. On November 17, 2021, this Court approved American Legal Claims Services (ALCS) to be the claims administrator to effectuate Student Class distributions [Doc. No. 4519].

6. On February 23, 2022, this Court granted Student Claimants' Motion to Approve Distribution Plan, Including An Award of Attorneys' fees and Expenses, and Student Claimants' Incentive Awards ("Distribution Motion") [Doc. No. 4561].

7. In granting the Distribution Motion, this Court approved the following process for Student Class distribution ("Distribution Plan"):

- The amount that each Class Member received would be a percentage of the Common Fund, after deduction of (i) the claims administrator fees and expenses payable under the ALCS Contract in connection with the distribution of the Common Fund; (ii) any attorneys' fees and expenses payable to the Project on Predatory Student Lending; and (iii) any Student Claimant incentive awards.
- If a Class Member's total amount due from the First Distribution was less than \$10.00, that amount was set aside until a further distribution was made. The Student Claimants set that threshold because ALCS, and other experts with whom the Student Class counsel consulted, advised that a significant percentage of checks in de minimis amounts would simply not be cashed by the recipient. The Distribution Plan provided that if the total amount to due to any Class Member, after giving effect to subsequent

distributions, was \$10 or greater, any Class Member who did not receive a distribution from the First Distribution would have that amount added to any subsequent distributions.

- If a Class Member's total amount due from all distributions does not equal or exceed \$10, they did not receive a distribution.
- Once all distributions were made, an amount remained that was too small to merit another distribution, taking into account the cost of distribution, Student Claimants would submit to the Court a motion to approve a Cy Pres distribution ("Cy Pres Award").

III. DISTRIBUTIONS AND CLOSING PROCESS

8. In June 2022, the First Distribution of approximately \$6.5 million was made to 227,971 Class Members pursuant to the Distribution Plan.

9. In the beginning of March 2024, a Second Distribution of approximately \$62 million was made to 397,372 Class Members pursuant to the Distribution Plan.

10. In the First Distribution, inevitably some checks that were mailed to Class Members were not cashed. And despite ALCS's diligent efforts to track down the current addresses of Class Members (some of whom attended ITT as long as 18 years ago), some checks were also returned undelivered.

11. Based on the amount distributed and the anticipated percentage of checks that will not be cashed for the Second Distribution, ALCS, based on their experience in this field, has indicated that there will likely be enough money in the Common Fund to justify a Third Distribution. This Third Distribution will be made during the end of summer 2024 to Class Members who are known and identifiable and who cashed checks from the Second Distribution or

received electronic payments from the Second Distribution. Per the Distribution Plan, this would exclude Class Members whose potential distribution never equaled or exceeded the \$10 minimum.

12. This Third Distribution will, under the terms of the Distribution Plan, be comprised of money originally allocated to (i) Class Members who did not timely surface before the end of the Second Distribution, (ii) Class Members who cannot be located or never cashed their checks, and (iii) Class Members whose potential distribution never exceeded the \$10 minimum.

13. Even though the Third Distribution will be made exclusively to identified Class Members who have already received and accepted Distribution funds, ALCS has indicated that a certain percentage of these Class Members may not cash the checks they receive from the Third Distribution. Therefore, it is possible that a Fourth Distribution to Class Members who cashed the Third Distribution checks, or who received electronic payments from the Third Distribution, will be feasible.

14. In the event that a Fourth Distribution is feasible, in the reasonable judgment of ALCS and Student Class Counsel, taking into consideration the remaining amount available in the Common Fund, the costs associated with making the distribution, and the \$10 payment minimum, Student Class Counsel would direct ALCS to make the Fourth Distribution and final distribution to the Student Class. This Fourth Distribution would occur sometime in the fall or winter of 2024. Once a Fourth Distribution is made, any remaining funds left over would be paid as a Cy Pres Award.

15. In the event that a Fourth Distribution is not feasible—that is, if the funds available after the Third Distribution do not justify the cost of making a further distribution—any remaining funds left over after the Third Distribution will be paid as a Cy Pres Award.

16. The Student Claimants could wait to approach this Court with a Cy Pres Award request after the results of a Third Distribution are known. However, Student Claimants are aware that this Chapter 7 proceeding is anticipated to be closed in the ordinary course in the next few months and do not want to needlessly delay that closing.

17. Accordingly, the Student Claimants are seeking the approval of a Cy Pres Award, to be authorized now, but paid when the results of the Third Distribution, and any Fourth Distribution, are determined.

IV. PROPOSED CY PRES RECIPIENT: DEBT COLLECTIVE

18. The Debt Collective is a not-for-profit membership-based union for debtors.² Since its founding in 2014, the Debt Collective has organized former students at for-profit schools like ITT, Corinthian Colleges Inc., and many others to advocate for the cancellation of fraudulent debts.

19. The Debt Collective created the first-ever model for a federal student loan borrower defense application, since no such form existed to assert borrowers' rights under the law. The Debt Collective helped ITT students file borrower defense applications with the Department of Education. Those applications played a role in the Department of Education's 2022 decision to cancel federal student loan debt for approximately 208,000 former ITT students, including many Student Claimants, further mitigating, although not eliminating, the harm caused by ITT's predatory practices.³

20. In helping ITT students file borrower defense applications, the Debt Collective gathered student testimonies about their experiences at ITT and the fraud that was perpetrated on them. Those testimonies were included by the Student Claimants when they filed their class action

² <https://debtcollective.org/>

³ <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>

complaint in this Chapter 7 proceeding. Debt Collective also supported Student Claimants' participation in this Chapter 7 proceeding by identifying former students harmed by ITT and connecting them to Student Class Counsel.

21. In addition to working on student debt issues, the Debt Collective also helps borrowers impacted by evictions, rent debt, medical debt, and other household debts. These populations significantly overlap with those affected by predatory schools and fraudulent student loan debt.

22. The Debt Collective organizes borrowers, provides them with resources to challenge unlawful and fraudulent debts, and creates opportunities for its members to educate policymakers and the public on the experiences of those facing financial insecurity and unmanageable and sometimes predatory debt.

23. The Project on Predatory Student Lending and the Debt Collective both advocate within the higher education space and have collaborated on several projects; however, the Project on Predatory Student Lending has never represented the Debt Collective in any legal proceeding and has never received any funding from the Debt Collective. Nor does the Project on Predatory Student Lending have any financial or corporate relationship with the Debt Collective.

24. The Debt Collective is a non-profit operating with Sustainable Markets Foundation as its fiscal sponsor. Sustainable Markets Foundation is a 501(c)(3) that serves as a fiscal sponsor for many fledgling and established nonprofit organizations working as advocates for environmental and financial justice. Because of the nature of the Debt Collective's nonprofit status, any Cy Pres Award will be awarded to the Sustainable Markets Foundations, which will turn over all of the Award to the Debt Collective.

V. ARGUMENT

25. Student Claimants, through Student Class Counsel and with the help of ALCS, are committed to making sure that Class Members receive as much financial benefit as possible from the Common Fund. Even in the best-case scenario, it will not be feasible to distribute every single dollar to Class Members. Anticipating this, a Cy Pres Award is contemplated in the Distribution Plan that was approved by this Court. [Doc. No. 4636]. *See also Ira Holtzman, C.P.A., & Assocs. Ltd. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013) (“Money not claimed by class members should be used for the class’s benefit to the extent that is feasible.”).

26. The Seventh Circuit has approved *cy pres* recipients where there is relationship “between the proposed *cy pres* recipient and the underlying litigation.” *Heekin v. Anthem, Inc.* 2012 WL 5472087, *13 (Ind. S.D. 2012). Said another way, in determining whether to approve a *cy pres* award, a court must find “a rational benefit relationship between the *cy pres* recipient and the plaintiff class.” *Glen Ellyn Pharm., Inc. v. La Roche-Posay, LLC*, 2012 WL 619595 *2 (Ill. N.D. 2012); *see also Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185(N.D. Ill. 2018) (where the case claims centered around TCPA violations, the court found that the National Consumer Law Center, which engages in substantial advocacy relating to consumer protection from robocalls and telemarketing, was a reasonable *cy pres* recipient).

27. Student Claimants, along with Student Class Counsel, believe that the work that Debt Collective does has a very rational and relevant relationship to the Student Class.

28. The Debt Collective works directly with students who have been harmed by predatory for-profit colleges. Its work informing thousands of affected students of their right to request federal and private loan cancellation based on school misconduct not only benefited the

former students, but informed and supported federal initiatives to better hold predatory for-profit schools accountable going forward and to give relief to students harmed in the past.

29. ITT destroyed thousands of people's dreams of getting a college education by misleading and lying to students, giving them a worthless education, and saddling them with unsurmountable debt. And although ITT has shuttered its doors, the predatory higher education practices it engaged in remain widespread.

30. There are many other predatory schools and programs that continue to exist today and there are still thousands of students who are haunted by their fraudulent student loan debt. The Debt Collective plays a critical role in organizing student voices and making sure that intentional and systematic misconduct is exposed to the light of day, rather than being carelessly dismissed as the work of a rogue recruiter or the gripes of a lone disgruntled student. There is so much more work to be done on behalf of defrauded borrowers.

31. The Debt Collective fights alongside defrauded borrowers to make sure that they get the justice they deserve for past wrongs, to prevent borrowers from being defrauded in future, and to help its members create unity and community to challenge the institutions that defrauded them. The funds from the Cy Pres Award will be used to continue Debt Collective's vital work with and on behalf of its members.

NOTICE

32. Pursuant to the Case Management Procedures, a copy of this Motion and Exhibits will be served on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) Affected Entities. **NOTICE IS GIVEN**, that pursuant to the Case Management Procedures, any objection to this Motion must be in writing and filed with the Bankruptcy Clerk by no later than May 21, 2024, at

4:00 pm. (EDT). Parties not represented by an attorney may deliver any written objection to this Motion as follows: (a) by U.S. mail, courier, overnight/express mail at Clerk, United States Bankruptcy Court, Re: *In re ITT Educational Services, Inc., et al.*, 116 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46024; or (b) by publicly accessible drop box available at the Indianapolis Division located at the New York Street and Pennsylvania Street entrance. The objecting party must also serve a copy of the written objection on the Student Class Counsel:

Eileen M. Connor
Victoria Roytenberg
John Sigel
**PROJECT ON PREDATORY STUDENT
LENDING, INC**
769 Centre Street
Jamaica Plain, MA 02130

– and –

Catherine Steege
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353 N. Clark Street
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34. If an objection is NOT timely filed, the requested relief may be granted without a hearing. **NOTICE IS FURTHER GIVEN**, that in the event that an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on May 28, 2024, at 10:30 am EDT, in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204. Interested parties may also participate at the hearing by conference call by calling 571-353-2301, passcode 734120790.

WHEREFORE, the Student Claimants respectfully request that this Court GRANT the Motion and enter a final order granting the relief requested herein and any such other relief as may be just and proper.

Dated: May 2, 2024

Respectfully submitted,

/s/ Victoria Roytenberg

Victoria Roytenberg (pro hac vice)

Eileen M. Connor (pro hac vice)

John D. Sigel (pro hac vice)

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024, a copy of the foregoing Student Claimants' Motion for Approval of Closing Process for Student Class Distributions Including a Cy Pres Award was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing was sent to all parties registered to receive filings in this case through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system, in compliance with Section IV. C.6 of the Case Management Procedures.

I further certify that on May 2, 2024, a copy of the foregoing Student Claimants' Motion for Approval of Closing Process for Student Class Distributions Including a Cy Pres Award was mailed via U.S. First-Class Mail and properly addressed to the following:

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Exhibit A
[Proposed Order]

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANAPOLIS DIVISION**

IN RE:

ITT EDUCATIONAL SERVICES, INC. et al.¹

Debtors

Chapter 7

Case No. 16-07207-JMC-7A

**ORDER GRANTING STUDENT CLAIMANTS' MOTION FOR APPROVAL OF
CLOSING PROCESS FOR STUDENT CLASS DISTRIBUTIONS INCLUDING A CY
PRES AWARD**

Upon the motion² (the "Motion") [Doc.] of Student Claimants for an order pursuant to Federal Rules of Bankruptcy Procedure ("FRBP") 9014 applying FRBP 7023, having jurisdiction over this Motion pursuant to 28 U.S.C. § 1334, it appearing that venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409, it appearing that this matter affects the administration of the debtors'

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

² Capitalized terms used but not otherwise defined herein shall have the meanings used in the Motion.

estate, and having heard the representations of counsel for Student Claimants at a hearing on May 28, 2024, after due deliberation thereon, it is hereby

ORDERED:

1. The Motion is GRANTED:
2. Student Claimants may proceed with the closing process described in the Motion; and
3. The Debt Collective is the Cy Pres Award recipient.

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